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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Frank E. Joutras, et al.) Patent Application
Serial No: 09/379,851) Group Art Unit: 3764
Filed : August 24, 1999) Examiner: Denise Pothier
For : EXERCISE APPARATUS) Date: November 21, 2001
AND TECHNIQUE)

PETITION TO WITHDRAW REQUIREMENT FOR RESTRICTION

Commissioner for Patents
Washington, D.C. 20231

Sir:

The applicant hereby petitions the Commissioner to withdraw the requirement for restriction between inventions for the reasons stated below:

BACKGROUND

This application was filed on August 24, 1999, and was assigned serial no. 09/379,851. A nonfinal Office action was mailed October 11, 2000, requiring applicant to elect a single species from claims 1-7. Applicant responded in an amendment dated January 3, 2001, amending claims 2-4, adding new claims 8-24 to better define the

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invention, and provisionally electing with traverse the invention of claims 1-8 and the claims directed to species D, claims 1-4.

A nonfinal Office action was mailed March 27, 2001, requiring restriction to one of the inventions of claims 1-24. The applicant responded in an election dated April 24, 2001, by provisionally electing with traverse the invention of claims 1-12, drawn to an orthotic apparatus and requesting the election of invention be withdrawn.

A nonfinal Office action was mailed July 12, 2001, making the restriction requirement final, withdrawing claims 13-24 from consideration, and rejecting claims 1-12. The applicant responded in an amendment dated October 12, 2001, by amending claims 5 and 6 and requesting reconsideration of the restriction requirement.

ARGUMENT

Claims 13-24 should not have been withheld based on being directed to a non-elected invention because they are not independent and distinct from claims 1-12. Method claims 13-24 cannot be practiced with an apparatus other than the orthotic apparatus of claim 1, which recites a joint. Claims 13-19 describe a method of reducing arthrokinetic dysfunction using the apparatus of claims 1-12 and claims 20-24 describe a method of aiding a person in physical activity, using the apparatus of claims 1-12. The methods and apparatuses are both used for the same purpose and indeed, the methods use the claimed apparatus.

The method of claims 13-19 for reducing arthrokinetic dysfunction can only be practiced using the apparatus for reducing arthrokinetic dysfunction of claims 1-12. Arthrokinetic dysfunction, as defined on page 11 of the specification "means that ordinary

movement of body portions about a joint result in symptomatic events such as pain and/or inflammation and/or movement in a direction at an angle to the desired movement.” Thus, in providing controlled exercise as therapy for a patient who's symptoms result from movement of one of their limbs about a joint, the exercise apparatus used must contain a jointed limb brace which can be attached to the patient. Without a jointed brace, the patient would be restricted in movement of their limb since their limb is moved by the flexing of their muscles which in turn, flexes a joint. For example, in order for a patient to move their arm, they must flex the muscles in their arm which causes their elbow to bend. A brace without a joint would not permit the bending which results from the flexing of a joint as a result of moving a muscle. Accordingly, if a patient did not use an exercise apparatus including a jointed limb brace, the method of claims 13-19 of reducing arthrokinetic dysfunction could not be practiced.


The method of claims 20-24 of aiding a person in physical activity with weakened or damaged muscle can only be practiced using the apparatus of claims 1-12. In aiding a person with weakened muscle in physical activity, the apparatus used must contain a jointed limb brace which can be attached to the patient. The jointed brace allows for the bending or flexing of a joint which occurs when the patient moves the limb that has weakened or damaged muscle.

In the same manner a person is unable to move a muscle without a joint, the methods described in claims 13-24 can not be practiced without the jointed apparatus of claim 1. Accordingly, the decision to restrict claims 13-24 based on being directed to a non-elected invention should be withdrawn.

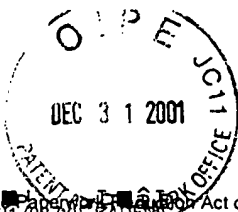
REQUEST

It is respectfully requested that the Commissioner grant this petition and withdraw the restriction between inventions and allow claims 13-24 to be examined in this application.

Respectfully submitted,


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-- Our Ref: 558-9-13-1



#3764

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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/379,851	
	Filing Date	08/24/1999	
	First Named Inventor	Frank E. Joutras	
	Group Art Unit	3764	
	Examiner Name	Denise Pothier	
Total Number of Pages in This Submission	7	Attorney Docket Number	558-9-13-1

ENCLOSURES (check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form (2 copies) <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input checked="" type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): a postcard receipt
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Vincent L. Carney, Attorney for Applicant
Signature	<i>Vincent L. Carney</i>
Date	11/21/2001

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CERTIFICATE OF MAILING			
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: 11/21/2001			
Typed or printed name		Vincent L. Carney	
Signature	<i>Vincent L. Carney</i>	Date	11/21/2001

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**FEE TRANSMITTAL
for FY 2002**

Patent fees are subject to annual revision.

TOTAL AMOUNT OF PAYMENT

(\$) 130.00

Complete if Known

Application Number	09/379,851
Filing Date	08/24/1999
First Named Inventor	Frank E. Jourtas
Examiner Name	Denise Pothier
Group Art Unit	3764
Attorney Docket No.	558-9-13-1

METHOD OF PAYMENT

- 1.
- ☒
- The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit Account Number: 03-0778
 Deposit Account Name: Vincent L. Carney

☒ Charge Any Additional Fee Required Under 37 CFR 1.16 and 1.17☒ Applicant claims small entity status. See 37 CFR 1.27

- 2.
- ☒
- Payment Enclosed:

☒ Check ☐ Credit card ☐ Money Order ☐ Other**FEE CALCULATION****1. BASIC FILING FEE**

Fee Code	Large Entity (\$)	Small Entity (\$)	Fee Description	Fee Paid
101	740	370	Utility filing fee	
106	330	165	Design filing fee	
107	510	255	Plant filing fee	
108	740	370	Reissue filing fee	
114	160	80	Provisional filing fee	

SUBTOTAL (1) (\$) 0.00

2. EXTRA CLAIM FEES

Total Claims	Extra Claims	Fee from below	Fee Paid
Independent Claims	-20** =	X	
Multiple Dependent Claims	-3** =	X	

Fee Code	Large Entity (\$)	Small Entity (\$)	Fee Description
103	18	9	Claims in excess of 20
102	84	42	Independent claims in excess of 3
104	280	140	Multiple dependent claim, if not paid
109	84	42	** Reissue independent claims over original patent
110	18	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$) 0.00

**or number previously paid, if greater; For Reissues, see above

FEE CALCULATION (continued)**3. ADDITIONAL FEES**

Fee Code	Large Entity (\$)	Small Entity (\$)	Fee Description	Fee Paid
105	130	65	Surcharge - late filing fee or oath	
127	50	25	Surcharge - late provisional filing fee or cover sheet	
139	130	130	Non-English specification	
147	2,520	2,520	For filing a request for <i>ex parte</i> reexamination	
112	920*	920*	Requesting publication of SIR prior to Examiner action	
113	1,840*	1,840*	Requesting publication of SIR after Examiner action	
115	110	55	Extension for reply within first month	
116	400	200	Extension for reply within second month	
117	920	430	Extension for reply within third month	
118	1,440	720	Extension for reply within fourth month	
128	1,960	980	Extension for reply within fifth month	
119	320	160	Notice of Appeal	
120	320	160	Filing a brief in support of an appeal	
121	280	140	Request for oral hearing	
138	1,510	1,510	Petition to institute a public use proceeding	
140	110	55	Petition to revive - unavoidable	
141	1,280	640	Petition to revive - unintentional	
142	1,280	640	Utility issue fee (or reissue)	
143	460	230	Design issue fee	
144	620	310	Plant issue fee	
122	130	130	Petitions to the Commissioner	130.00
123	50	50	Processing fee under 37 CFR 1.17(q)	
126	180	180	Submission of Information Disclosure Stmt	
581	40	40	Recording each patent assignment per property (times number of properties)	
146	740	370	Filing a submission after final rejection (37 CFR § 1.129(a))	
149	740	370	For each additional invention to be examined (37 CFR § 1.129(b))	
179	740	370	Request for Continued Examination (RCE)	
169	900	900	Request for expedited examination of a design application	

Other fee (specify) _____

*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$) 130.00

SUBMITTED BY

Name (Print/Type)	Vincent L. Carney	Registration No. (Attorney/Agent)	20,688	Telephone	(402) 465-8808
Signature	Vincent L. Carney	Date	11/21/2001		

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